STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

July 17, 2003

TO: ALL PARTIES OF RECORD IN APPLICATION 02-03-035

Decision 03-07-031 is being mailed without the Dissent of Commissioner Wood. Commissioner Lynch might joint his dissent. The Dissent will be mailed separately.

Very truly yours,

ANGELA K. MINKIN by PSW
Angela K. Minkin, Chief
Administrative Law Judge

ANG:tcg

Attachment

152304

 Mailed 7/17/2003

Decision 03-07-031 July 10, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Southern California Edison Company (U-338-E) and Pacific Terminals LLC for Southern California Edison Company to Sell Fuel Oil Pipeline Facilities to Pacific Terminals LLC and for Pacific Terminals LLC to Purchase such Fuel Oil Pipeline Facilities and to Operate Them as a Public Utility.	Application 02-03-035 (Filed March 22, 2002)

Morrison & Foerster, LLP by Peter W. Hanschen, Attorney at Law, for Pacific Terminals LLC and Sumner J. Koch, Attorney at Law; for Southern California Edison Company; applicant.

Law Office of Thomas P. Corr by Thomas P. Corr, Attorney at Law, for City of Huntington Beach; Daniel Dominguez for Utility Workers Union of America-Local 246; Victor Hugo Hernandez, for UWUA 246; Gail Hutton, City Attorney, for City of Huntington Beach; Frank R. Lindh, Attorney at Law, for Pacific Gas and Electric Company; David P. Waite, for City of Huntington Beach; Katie P. Wilson, for City of Cerritos; interested parties.

R. Gordon Gooch, John B. Merritt, Attorney at Law; and Elisabeth R. Myers-Kerbal, for British Petroleum West Coast Products Company; Kate Poole, Attorney at Law, for Coalition of Calif. Utility Employees; protestants.

Patrick Gileau and Louis M. Irwin, for Office of Ratepayer Advocates.

OPINION APPROVING SALE

TABLE OF CONTENTS

Title **Page**

OPINION APPROVING SALE

1. Summary

In this decision, the Commission approves the sale of Southern California Edison Company's (SCE) Fuel Oil Pipeline (FOP) Facilities to Pacific Terminals LLC (Pacific Terminals) under Pub. Util. Code §§ 851 and 854, and concludes that Pub. Util. Code § 377,[1] as amended by Assembly Bill (AB) 6X does not bar this sale.

2. Introduction

In this Joint Application, SCE and Pacific Terminals seek Commission approval under § 851 and § 854 of the Pub. Util. Code of the sale by auction and the transfer to Pacific Terminals of SCE's FOP Facilities,[2] which, for the purpose of the Joint Application, include two categories of assets:

The first category, referred to herein as the Edison Pipeline and Terminal Company (EPTC) System Facilities, consists of the assets now used for SCE's commercial oil storage and transport operations for third parties. Some of these assets were originally developed to supply and maintain the fuel oil for generating stations formerly owned by SCE. The rest of the assets were developed for commercial oil transport and storage, pursuant to the authority granted by the Commission in Decision (D.) 94-10-044.[3] The EPTC System

---

[1] Unless otherwise indicated, all subsequent statutory references are to the Public Utilities Code.

[2] FOP Facilities are the sum of EPTC, the Edison Pipeline and Terminal Company, and the Station Facilities.

[3] By D.94-10-044, the Commission found that SCE's FOP Facilities would become dedicated to a public use in providing service to third parties and would, thereby,

Footnote continued on next page

Facilities include assets developed and supported by electric utility ratepayers as well as other assets developed by shareholders and supported by shareholders.

The second, much smaller, category is referred to as the Station Facilities. These assets were developed for on-site storage and supply of fuel oil for the generating stations. They have not been part of SCE's third-party oil transportation and storage business, and electric utility ratepayers have wholly supported them.

The total purchase price is $158.2 million. Pacific Terminals determined that of the $158.2 million. $152.9 million represents the amount paid for the EPTC System Facilities. The remaining $5.3 million represents the portion of the total attributable to the Station Facilities.

SCE's fuel oil pipeline and storage facilities in Southern California were originally built to store and supply SCE's electric generating stations[4] with residual fuel oil purchased from local oil refinery suppliers or brought into the system by marine vessel through supply lines from harbor facilities. The facilities subject to this Joint Application consist of 120 miles of oil pipeline[5] with connections to the Port of Long Beach and to Los Angeles-area oil refineries, oil storage tanks totaling 9.4 million barrels (bbl) of nominal capacity, and eleven pumping and heating stations.

Prior to 1994, these facilities were operated and maintained by SCE's Fuel Oil Pipeline Division (FOP Division) and its Steam Generation Division, both

---

become a "Pipeline Corporation" and "Pipeline" subject to the Commission's jurisdiction under § 227 of the Pub. Util. Code.

[4] These generating stations were owned by SCE at the time but have since been divested.

[5] Of this total, 75 miles are active.

part of the Generation Business Unit. The FOP Division operated and maintained the inter-station pipeline and storage facilities (System Facilities), while the Steam Generation Division operated and maintained the *intra*-station distribution pipelines and storage equipment associated with each electric generating station (Station Facilities). The primary functions of the System Facilities were receiving oil from suppliers, providing interim storage as needed for SCE's generating stations, and transporting oil to the generating stations to assure adequate fuel oil supplies for electrical system operation when fuel oil was the primary fuel utilized at the generating stations. In early 1991, when fuel oil became a secondary fuel for the generating stations, the function of the FOP Division began providing Backup Fuel Oil Services (BFOS) for electric system reliability through strategic deployment of the remaining fuel oil inventory for emergency use in the event of an interruption of the natural gas supply to the generating stations.

Recognizing that the System Facilities would be underutilized in this role, SCE filed Application (A.) 93-07-029 to allow encumbrance of the System Facilities for revenue generation via third-party use, when the System Facilities were not being used by SCE. The Commission issued D.94-10-044, allowing SCE to proceed with this endeavor. In addition, the Commission authorized expenditure of shareholder funds to make the System Facilities suitable for conducting third-party business.

The FOP Division was renamed the Edison Pipeline and Terminal Company to market the underutilized capacity of the System facilities to third parties, while maintaining its commitment to provide fuel backup transportation and storage services for SCE's generating stations. The Commission recognized this ongoing role in maintaining readiness to support electric utility operations by authorizing, in SCE's 1995 General Rate Case, the collection through electric rates of a portion of the costs for these facilities, and these costs have continued to be collected in rates.[6]

In 1998, electric industry restructuring brought about by Assembly Bill 1890 resulted in the sale of all the SCE generating stations utilizing residual fuel oil and natural gas fuel. SCE committed to continue to provide BFOS to the new owners of the generating stations for a period of 18 months or until the California Independent System Operator (CALISO) decided on the continued need of BFOS for reliability purposes.

On August 26, 1999, the CALISO determined that BFOS were no longer required for electrical system reliability at the former SCE generating stations. This Commission informed the CALISO that it had no objection to the release of generating stations formerly owned by SCE from backup oil burning capability. In D.01-02-059, the Commission implicitly recognized that the EPTC System Facilities were not generation-related assets subject to the valuation requirements of Pub. Util. Code § 367(b). In that decision, the Commission found that A.00-01-037, SCE's application to sell its fuel oil pipeline facilities, should be denied because there was no prospective buyer at the time.

The present Joint Application includes most of the EPTC System Facilities, as well as most of the remaining fuel oil-related Stations-Facilities that have not yet been sold or decommissioned.[7] The following diagram depicts the

---

[6] In SCE's Notice of Intent for its 2003 General Rate Case, filed December 17, 2001, no allocation is requested for the FOP Facilities, in light of the SCE's anticipated sale of these assets.

[7] Pursuant to authority granted by the Commission in D.99-06-078, certain former Station Facilities have already been sold or decommissioned. A small percentage of EPTC System Facilities are geographically isolated from the rest of the system, were not

Footnote continued on next page

categorization of assets included in the proposed sale and the terminology used throughout the Joint Application and this decision:

FOP Facilities		
EPTC System Facilities		**Station Facilities**
Ratepayer-Supported	Shareholder-Supported	Ratepayer-Supported

3. Procedural History

SCE and Pacific Terminals filed this application on March 2, 2002. Administrative Law Judge (ALJ) Carol Brown held a prehearing conference (PHC) on May 9, 2002. On June 14, 2002, the ALJ issued a ruling requiring the applicants SCE and Pacific Terminals to submit a brief supporting their position that the Commission has jurisdiction to proceed on this application in light of Pub. Util. Code § 377.

SCE and Pacific Terminals filed their joint brief on July 8, 2002. The Coalition of California Utility Employees (CUE) filed its brief on July 22, 2002; SCE and Pacific Terminals filed their joint reply brief on August 2, 2002.

A day of hearing was held on August 13, 2002, focused on ratemaking issues and on the merits of the proposed sale.

4. Pacific Terminals' Corporate History

Pacific Terminals is a Delaware limited liability company that was formed for the specific purpose of owning and operating the FOP Facilities that are to be acquired from SCE. It will be a wholly-owned subsidiary of Pacific Energy Group LLC, which in turn is a wholly-owned subsidiary of Pacific Energy Partners, L.P., a master limited partnership that is publicly traded on the New

---

of interest to potential EPTC buyers, and therefore are not included in this proposed

Footnote continued on next page

York Stock Exchange. The Commission approved this form of organization for Pacific Terminals' affiliate, PPS LLC, in D.02-06-069.

5. Section 377 Applicability

At issue here is whether SCE's FOP Facilities, are classified as "generation-related assets," under Section 377, as amended by AB 6X, and therefore barred from sale.

5.1. Position of the Applicants

SCE and Pacific Terminals' (Applicants') position is that the Commission does have the authority to consider and approve the sale of the FOP Facilities. The Applicants state that the FOP Facilities do not generate electricity, and the plain language of the statute as well as the legislative history indicate that the intent of the legislature was to restrict sales only of facilities that are actually used to generate electricity. Applicants believe that the statute does not address, and never was intended to apply to all ancillary support and other assets related to the generation of power.

Applicants note that even if the statute were to be read so broadly, the FOP Facilities do not provide any fuel for any generating stations, nor do they play any other role whatsoever in the generation of electricity. Applicants state that the FOP Facilities formerly played a role in providing fuel to several generating stations. However, in 1999 the CALISO, with the express concurrence of the Commission's Energy Division and the Electricity Oversight Board found, that the FOP Facilities were no longer needed to provide even an emergency back-up fuel supply to any generating stations. With this official determination, Applicants contend that the FOP Facilities ceased to have any role in the

---

sale.

generation of electricity. Applicants note that this happened well prior to January 2001, when the legislature amended Section 377 to bar the sale of facilities for the generation of electricity for the ensuing five years.

5.2. CUE's Position

CUE, on the other hand, believes that Section 377 applies to the proposed sale and takes the position that there are two possible answers to the question: either SCE's fuel oil pipeline facilities are facilities for the generation of electricity under Section 377, and therefore must remain dedicated to service for the benefit of California ratepayers, or the fuel oil pipeline facilities are not facilities for the generation of electricity and SCE has over-collected tens of millions of dollars from ratepayers for the support of these facilities. CUE states that if the first answer is correct, the Commission cannot approve the proposed sale of the facilities. If the second answer is correct, SCE must repay ratepayers the full over-collection before the sale may go forward.

CUE goes on to state that because SCE continues to this day to collect funds from ratepayers to support the fuel oil pipeline facilities as generation assets, SCE should be estopped from now arguing that the facilities are not generation assets because it is suddenly in SCE's interest to do so.

CUE notes that based on the use of the facilities as a primary and back-up fuel oil storage and transmission system for SCE's generating plants, both the Commission and SCE previously recognized that the fuel oil pipeline facilities were generation-related assets that required market valuation under AB 1890.[8]

Applicants counter in their reply brief, along with other arguments, that CUE overlooks the fact that the Commission already determined in D.01-02-059

---

[8] CUE references D.97-11-074 and A.98-05-014.

that the FOP Facilities are not "generation-related assets" for purposes of market valuation by year-end 2001 under Pub. Util. Code § 367(b). Applicants also contend that if the Commission has determined that the FOP Facilities are not even "related" to generation, one cannot now logically conclude that the FOP Facilities meet the more stringent criteria set forth in Pub. Util. Code § 377 of actually being "facilities for the generation of electricity." Applicants also state that CUE's position represents an unlawful collateral attack on D.01-02-059.

5.3. Discussion of Section 377

In considering this application, we address § 377, which reads:

> The commission shall continue to regulate the facilities for the generation of electricity owned by any public utility prior to January 1, 1997, that are subject to commission regulation until the owner of those facilities has applied to the commission to dispose of those facilities and has been authorized by the commission under Section 851 to undertake that disposal. Notwithstanding any other provision of law, no facility for the generation of electricity owned by a public utility may be disposed of prior to January 1, 2006. The commission shall ensure that public utility generation assets remain dedicated to service for the benefit of California ratepayers.

Thus, before we may consider the merits of these applications, we must address the threshold question – does § 377 bar the proposed transaction?

The assets in question here were owned by SCE prior to January 1, 1997. We must determine whether the assets that SCE wants to dispose of are a facility or facilities for the generation of electricity. If so, such assets may not be disposed of prior to January 1, 2006. The obvious example of a facility used for the generation of electricity would be a power plant, which literally is a facility that generates electricity. Section 377 clearly bars disposal of power plants owned by public utilities.[9]

But we are left with the question of whether § 377 only bars disposal of a power plant itself, or whether it has a broader scope. We must determine whether a facility for the generation of electricity includes more than just the power plant. For example, the land on which a power plant sits does not actually generate electricity, nor would it appear to be a facility. Does this mean that a utility could sell the land under a power plant, while keeping the power plant, itself? Or could a utility sell pipeline or storage facilities that provide fuel to power these generating plants.

Fortunately, the statute itself provides further guidance on this issue. The statute says that "public utility generation assets" are to remain dedicated to service for the benefit of California ratepayers. "Generation assets" is a term of art.

The Uniform System of Accounts (USOA) of the FERC provides confirmation that generation assets include more than just the power plant itself.[10] For example, Electric Plant Account 310 includes the cost of land and land rights associated with steam generation, Account 330 includes land and land rights for hydroelectric generation, Accounts 311 and 331 include the respective costs of structures and improvements for steam and hydroelectric generation, while Account 342 Fuel holders, Producers and Accessories, includes the cost of fuel handling and storage equipment used between the point of fuel

[9] This is confirmed by the subsequent enactment of § 377.1, which expressly exempted six hydroelectric plants from the restrictions of § 377.

[10] Utilities conform their records to the USOA. *See, e.g. Resource* 2nd Edition 1992.

delivery to the station and intake pipe through which fuel is directly drawn to the engine.

To the extent there is any potential conflict between the phrases "facility for the generation of electricity" and "generation asset," that conflict can, and accordingly must, be harmonized. (*See, e.g., Wells v. Marina City Properties, Inc.* (1981) 29 Cal. 3d 781, 788; *Louisiana-Pacific Corp. v. Humboldt Bay Municipal Water District* (1982) 137 Cal. App. 3d 152, 156.) Rather than disregarding the words "generation assets" and their well-established meaning, we construe the words "facility for the generation of electricity" to have the same breadth.

While we agree that Section 377 bars not just the disposal of power plants, but also the generation assets generally, there are other circumstances to consider here.

SCE states in its reply brief that the Commission in D.01-02-059, (A.00-01-037), determined that the FOP Facilities are not "generation-related" § 367(b). While the Commission did not make an explicit finding in D.01-02-059 with regard the whether or not the facilities were or were not "generation-related assets," it did address the issue and did not disagree with SCE's characterization of these assets.

<u>We conclude that the assets are not generation-related assets</u> based on the following facts:

- In August 1999 the CAISO concluded that there was no further need to retain the back-up fuel oil capability for the power plants that had been served by the FOP Facilities. Accordingly, SCE then proceeded to sell off the fuel inventory, and dismantle the connections between the FOP system and the power plants.
- In D.01-02-059, the Commission stated that the remaining FOP (fuel oil pipeline) Facilities would be subject to the Commission's jurisdiction under Pub. Util. Code §§ 216, 227 and 228 as an oil "pipeline." While the FOP Facilities would be

> owned and controlled by a regulated electric utility, they would not be “electric plant” under Pub. Util. § 217 and, consequently, would not be “generation related assets” under the provision of Pub. Util. Code § 367(b) and AB 1890.

Clearly, these assets, the Fuel Oil Pipeline Facilities, now a regulated oil pipeline company owned and operated by SCE, are no longer used directly or indirectly for electric generation purposes. Section 377 is not applicable.

6. California Environmental Quality Act (CEQA)

Since the project, the proposed sale, is subject to CEQA, the issue here is whether the proposed sale of the FOP Facilities meets CEQA guidelines, and if not what mitigation measures are necessary.

6.1. Applicants’ Position

Applicants state in the Joint Application they only propose a sale and transfer of ownership, and do not propose any construction or other physical changes. They believe the transfer of ownership of the FOP Facilities to Pacific Terminals will not itself produce any environmental impacts that might require mitigation. As noted previously, it is Pacific Terminals’ intention to operate the FOP Facilities in much the same manner as the EPTC System Facilities were operated by EPTC. Applicants state that any changes to the FOP Facilities that Pacific Terminals may make at a future date would be permitted in due course and in a manner similar to that which would be undertaken by EPTC. Applicants claim a change in ownership does not alter the regulatory status of the FOP Facilities; they will remain Commission-regulated facilities.

6.2. CUE’s Position

CUE notes that because the Commission is reviewing the environmental impacts of the sale on a separate track, CUE did not submit into the record for this phase for the proceeding evidence concerning what it believe are detrimental environmental impacts that would result as a result if the sale was approved. However, CUE states that it submitted expert opinion and other evidence regarding the significant environmental impacts of the sale in a letter to the Commission's Energy Division that was filed and served on all parties. CUE believes that the Commission should allow the parties to submit additional briefing on this issue after the Commission completes its CEQA review of the sale.

6.3. Discussion

The California Environmental Quality Act (Public Resources Code Section 21000, et seq., hereafter "CEQA"), applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential, significant environmental effects of the proposed activities." (Title 14 of the California Code of Regulations, hereinafter, "CEQA guidelines," Section 15002.)

Since the proposed project is subject to CEQA and the Commission must issue a discretionary decision without which the project cannot proceed (i.e., the Commission must act on the joint application seeking transfer of assets from Southern California Edison to Pacific Terminals), this Commission must act as either a Lead or a Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA guidelines Section 15051 (b)).

Here, the South Coast Air Quality Management District (SCAQMD) is the Lead Agency for the project under CEQA. The Commission is a Responsible Agency for this proposed project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency's environmental documents before acting upon or approving the project (CEQA guidelines 15050(b)). The specific activities which must be conducted by a Responsible Agency are contained in CEQA guidelines Section 15096.

The project before the Commission is the joint application of Southern California Edison (SCE) and Pacific Terminals (PT) requesting authority to sell and transfer pipeline facilities to PT and authorizing PT to operate them as a public utility. As described in the joint Application, Southern California Edison Company will transfer to Pacific Terminals a group of facilities (EPTC) that were previously operated by SCE/EPTC for third-party terminalling and bulk transfer operations. This group of facilities, its operation as a system, and three phases of contemplated operation, including facility upgrades and conversions, were previously subject to an environmental review and resultant Mitigated Negative Declaration (MND) in 1994 by the South Coast Air Quality Management District, including required mitigation measures applicable to facility operations, upgrades, and conversions for each of the three phases. Two modifications to the facilities in the 1994 MND are contemplated within the facilities proposed for transfer from SCE/ETPC to PT: (1) four tanks at Los Alamitos and two tanks at Long Beach will be added to the inventory of facilities subject to the transfer; and (2) a small number of facilities previously covered in the 1994 MND have been decommissioned and removed from the SCE/EPTC inventory, and are therefore not a part of the subject transfer.

Subsequent to the filing of the application in March of 2002, SCE and Pacific Terminals submitted the following documents in support of their application:

1. Proponent's Environmental Assessment (PEA): "Sale of Edison Pipeline and Terminal Company and Oil Pipeline Facilities Assets," June 21, 2002,

2. Appendix A to the PEA: "South Coast Air Quality Management District, Final Negative Declaration: Edison Fuel Oil Pipeline and Storage System Expanded Utilization Proposal," SCH No.94061041, August, 1994, and
3. Supplement to PEA: "Summary of Existing Air Quality Permits for Various Facilities Subject to the Joint Application," October 17, 2002.

The Applicants (Southern California Edison and Pacific Terminals) have applied to transfer by sale, with slight modifications, a system of facilities the operation of which were the subject of an MND previously adopted by the Commission. Upon review of the application and related submittals, the Commission has prepared an Addendum to amend the SCAQMD MND to include the additional facilities at Los Alamitos and Long Beach and further to impose the requirement that those facilities be both subject to the existing mitigation measures applicable to the existing project facilities and subject to the applicant-proposed conditions further outlined and recommended in the Addendum. Subject to the conditions outlined in the Addendum (attached to this decision), this transfer and associated modifications were reviewed by the agency and found not to result in either any new, previously undisclosed impacts or any previously disclosed impacts of greater severity, and therefore the proposed transfer and project modifications will have no significant impact on the environment. Therefore, the agency finds that the preparation of an Addendum pursuant to CEQA Guidelines Section 15164 is appropriate for the transfer of the subject facilities, as modified. An Addendum to the Mitigated Negative Declaration published by the South Coast Air Quality Management District, and previously adopted by this Commission in Decision 94-10-044, is attached to this decision.

6.4. Discussion of Environmental Issues Raised by CUE

We take note of the August 27, 2002, letter from the Coalition of California Utility Employees ("CUE") to the Energy Division staff raising concerns regarding the potential environmental effects of the transfer. CUE raises essentially three concerns: using the station tanks for black oil services is a new and different activity in the EPTC system; there is new information raising questions about the condition of the existing pipeline system; and reductions in staff or the use of less-qualified staff may result in significant environmental impacts. Each of these points is discussed below.

On the first point, CUE asserts that the 1994 SCAQMD MND does not consider the use of the six station tanks and that the tanks have not been in recent use. In a letter to the Energy Division staff dated September 16, 2002, SCE responds that the 1994 SCAQMD MND contemplated a flexible operational regime consisting of several phases wherein a broad array of facilities could be converted and / or brought on-line for third party service as dictated by market conditions. The 1994 MND contemplated conversions of tanks similar in type and function to the six station tanks and provided for mitigation measures to address the potential impacts of those conversions and bringing those facilities on-line. The six tanks can and will be made subject to the operational and mitigation regime outlined in the 1994 SCAQMD MND, and this Commission will do so by this decision. Indeed, PT has represented, and their witness Mr. Toole has testified, that they intend to keep the six station tanks in service with products that are consistent with both historical use and current permits. The tanks are not idle: SCE has represented in its letter to the Energy Division that, with the exception of Los Alamitos Tank No. 8, the station tanks are in service for black oil use, currently store or have recently been in service with black oil, and are permitted by the SCAQMD for such use.

On the second point, CUE asserts that there is new information regarding the condition of many of the pipeline assets that warrants further review. However, we find that there is no evidence that the facilities are degraded and, to the contrary, all information points to their continued use. The two completed pipeline additions cited by CUE were fully disclosed in the applicant's PEA, and there is no new relevant information for these projects that is not addressed in the PEA. These two pipeline segments were completed in full compliance with CEQA (one segment was exempt pursuant to Public Resources Code Section 21080.21 and the other was the subject of a Mitigated Negative Declaration issued by the City of Carson). We find nothing in the record indicating the need for replacement of any pipeline segments and there is no indication that any of the pipeline segments pose any significant risk. We note from SCE's response to the Energy Division that these lines will remain subject to the same regulatory regime irrespective of ownership, including maintenance, monitoring and testing requirements. Should PT seek to operate the EPTC system in a different manner, CEQA review would be initiated at that time to review that proposed change in operating regime. SCE asserts, and we are persuaded, that CUE has incorrectly assumed that there are pipeline segments that are not now in use that PT could start using. SCE explains in its communication to the Energy Division that all lines which have not been disconnected and capped off remain in an in-service state, fully maintained, monitored and tested by SCE, and that there is no reason to presume that they pose any significant risk. Indeed, CUE identifies Line 385 as an "unused" segment; however, SCE maintains that Line 385 remains fully in-service and was used for product transport as recently as March of 2002. In summary, there is no substantial evidence in the record indicating that the assets subject to transfer are in a degraded condition, nor is there any evidence that the transfer will exacerbate existing conditions of the assets subject to transfer. The assets are currently being operated under existing permits and subject to all applicable federal and state laws and regulations regarding pipeline safety. They will continue to be operated as such with no foreseeable incentives to change operations beyond current permits and entitlements, especially given the current market for black oil and bulk terminalling services.

CUE's third point is that potential reductions in staff or the use of less-qualified staff may lead to environmental impacts. PT's president has testified in this case that PT intends to operate the oil pipeline and storage facilities in much the same manner as SCE operated the facilities, and that PT anticipates that a substantial number of current SCE employees assigned to EPTC will be hired by PT. We note that oil pipeline safety, including operator personnel, is governed by U.S. Department of Transportation regulations, which are administered by the California State Fire Marshall. SCE indicated to the Energy Division that PT's affiliate, PPS LLC has participated in a nation-wide effort in developing a program for qualifying pipeline operators and contractor personnel performing operations and maintenance tasks on hazardous liquid pipelines, and that PT will comply with these rules and guidelines. We note from SCE's response to the Energy Division and the testimony of PT's president that PPS LLC employs only full-time company employees for the operation of company-owned pipelines, that PPS LLC does not employ contract personnel as pipeline system operators, and that it is PT's intention to implement a similar policy for PT. There is no substantial evidence in the record that the transfer will cause the staff to be reduced, that less-qualified staff will be used, or that either of these factors would lead to significant environmental impacts.

We note that CEQA Guidelines Section 15162, which imposes a "substantial evidence" standard and not the "fair argument" standard, governs the appropriate test for whether additional or subsequent environmental review is required. We are not persuaded that the record in this case provides substantial evidence to warrant additional environmental review and find that an Addendum to the 1994 SCAQMD MND is appropriate.

As to CUE's request that we should allow the parties to submit additional briefing on this issue after the Commission completes its CEQA review of the sale, we believe there is no need for further briefing of this issue because CUE concerns have been addressed.

7. Ratemaking Treatment

There are two major issues that we must decide: one is how the gain-on-sale of the EPTC Facilities should be apportioned[11]: all to shareholders of SCE; all to the ratepayers; or some sharing between the two stakeholders. The other issue is: what, if anything, should be done to address the fact that SCE's electric ratepayers have paid, and are still paying, the operating costs of the FOP Facilities since August, 1999 when the CALISO determined that back-up fuel oil would be no longer necessary.

The gross sale price of SCE's FOP Facilities is $152.9 million for the EPTC System Facilities and $5.3 million for the Station Facilities. The net gain-on-sale of the EPTC System Facilities is $47.4 million and $3.2 million for the Station Facilities.

7.1. SCE's Ratemaking Position

SCE proposes to treat the gain from the sale associated the ETPC System Facilities in accordance with what it characterizes as the long-standing "enduring enterprise" principle governing the ratemaking treatment of gains on sale,

---

[11] SCE does recommend that the gain from the sale of the Station Facilities accrue to the ratepayers, and no one disagrees with that recommendation.

articulated by the Commission especially in D.89-07-016 (regarding the City of Redding) and D.92-03-094 (regarding SoCalWater). SCE notes that in the latter decision, the Commission summarized the principle as follows:

> The "enduring enterprise" principle is neither novel nor radical. It was clearly articulated by the Commission in its seminal 1989 Policy decision on the issue of gain-on-sale, D.89-07-016, 32 Cal. P.U.C. 2d 233 (Redding). Simply stated, to the extent that a Utility realizes a gain-on-sale from the liquidation of an asset and replaces it with another asset or obligation while at the same time its responsibility to serve its customers is neither relieved nor reduced, then any gain-on-sale should remain within the utility's operation.[12]

SCE goes on to state that the Commission denied allocation to shareholders of the gain on sale from SoCalWater's former General Office, on the grounds that SoCalWater's utility obligation had not been reduced. However the Commission also expressly noted that:

> [T]he gain-on-sale will accrue to the benefit of shareholders in the future if and when the utility's operations are liquidated and its obligation to serve is dismissed.[13]

SCE continues and notes the Commission's statement in the earlier Redding Decision:

> "…we note that we have always allocated to the shareholders the gains or losses from the total liquidation of a public utility."[14]

---

[12] D.92-03-094, mimeo., p.14.

[13] Id., p. 15. SCE's 193 application to establish the fuel oil pipeline business noted that this case was "[a]rguably, the relevant precedent of disposition of net gains or losses on the sale of the System…" (A.93-07-029, SCE-2, p. VI-4.)

SCE states that the principle set forth in the Redding and SoCalWater cases should apply, as the proposed sale of the FOP Facilities is just such a liquidation event for SCE. Although a Commission-jurisdictional pipeline corporation (Pacific Terminals) will continue operating the facilities, SCE is completely liquidating its interest in the pipeline utility and withdrawing from the business, and its obligation to serve pipeline utility customers will terminate.

SCE contends that the fundamental underlying principle supporting the results in those cases is equally applicable here. SCE argues that it is only the shareholders who have put their capital at risk, and that shareholders should reasonably receive all of the return on that capital. SCE further states that the ratepayers received their full “return”on the expenses borne by them through the assets’ provision of services to the ratepayers. This “return” was further supplemented since 1994 by a share of EPTC’s gross revenues.

In addition, SCE proposes to return to the ratepayers $28.7 million of decommissioning costs it has collected from the ratepayers to pay for decommissioning of the FOP Facilities. SCE proposes to retain an additional $9.3 million for the decommissioning of SCE’s remaining fuel oil-related facilities that were excluded from the sale. SCE also proposes to return to the ratepayers any portion of the $9.3 million amount that SCE has not spent within five years.

---

[14] D.89-07-016, mimeo., p. 3. SCE notes that although the Redding decision specifically concerned the sale of a utility distribution system to a municipality or other public entity, the Commission applied and amplified the principle of allocation of gain upon utility liquidation in the 1992 SoCalWater case, which presented different circumstances.

7.2. ORA's Ratemaking Position

ORA supports the proposed sale. Its concern is the Applicants' proposed accounting of the gain-on-sale. ORA recommends allocating 86% of the gain associated with the EPTC facilities sale to the ratepayers, the balance to the shareholders. ORA states that its 14% allocation to the shareholders is in recognition of the fact that, since 1994, shareholders have made substantial improvements to the facilities and have been solely responsible for the associated costs.

ORA proposes that the EPTC facilities should be treated like other generating assets which were divested with the gain going to the ratepayers. ORA notes that as part of the electric restructuring pursuant to AB 1890, SCE divested the generating plants that had relied on the EPTC facilities for emergency backup service. Under the provisions of AB 1890, any gain on the sale of these generating plants was credited to the Transition Cost Balancing Account (TCBA) as an offset to transition costs.

ORA notes that while D.01-02-059 found that the EPTC facilities were no longer used and useful from the perspective of electric ratepayers, the ratepayers continued to pay for them as though they were still providing a generation-related service.

ORA states that under the unique circumstances of the energy crisis, the fact that SCE was near bankrupt, led to the Settlement Agreement between the Commission and SCE, which obligated SCE's ratepayers to $3.2 billion in procurement related liabilities. These cost are recorded in the Procurement Related Obligations Account (PROACT). ORA believes that fairness dictates that the facilities should be treated like other generation assets which were divested pursuant to AB 1890 with the proceeds from the sale of the facilities used to the offset ratepayers' obligation under the Settlement Agreement to pay off the

$3.2 billion balance. ORA points out that this is the same treatment SCE proposes for the smaller $3.2 million gain associated with sale of the Station Facilities. ORA also points out while the facilities are not longer generation-related, this should not alter its recommendation.

ORA also notes that while the facilities are not currently providing a generation related service, SCE's ratepayers continue to pay for them as if they were still providing a generation-related service. ORA estimated in its July 10, 2002 report (Exhibit 601) that since August 1999, the time period in which CAISO declared that back up fuel oil facilities would no longer be required, that ratepayers have contributed over $60 million in support of facilities, which were no longer providing a service. ORA estimates that the annual revenue requirement for these facilities supported by the ratepayers is $20 million.

ORA also believes the shareholders' share of the gain-on-sale should be limited to SCE's authorized rate of return, 11-12%, rather than its estimate of 150% rate of return if it receives all the gain-on-sale.

ORA does not believe the two cases cited by SCE support SCE's position for 100% of the gain-on-sale to accrue to the shareholders of SCE. ORA believes the cases are significantly different. ORA cites the four (4) part test of the Redding II line of cases in determining whether the gain-on-sale goes to the shareholders, and concludes, at best, that SCE does not meet the requirements completely. It states that even if Redding II is the appropriate standard, ratepayers are entitled to a substantial part of the gain based on the fact that since mid-1999 the ratepayers have been effectively contributing capital to the third party business, the pipeline customers.

ORA cites D.94-09-032, 56 CPUC 2d, 4, a case involving California Water Service Company, which was decided after Redding II. In that case the Commission addressed a situation in which a water company was selling 26 parcels of land that were no longer used and useful but which had improperly remained in ratebase long after losing their usefulness. ORA believes that situation is quite similar to the one here, since the assets being sold lost their usefulness in August 1999 and are still in ratebase. Under those circumstances the Commission found that the gain should be split 50/50 between ratepayers and shareholders. Id., p. 15-16.[15]

ORA also recommends that the $28.7 million decommissioning costs be returned to the ratepayers, but recommends that of the $9.3 million that SCE has retained for decommissioning of the fuel oil-related facilities not included in the sale be returned with interest at the end of the five-year period.

7.3. CUE's Position on Ratemaking

CUE believes that the Commission should reject SCE's proposal that the entire gain on sale from the EPTC System Facilities be allocated to SCE's shareholders. CUE maintains that SCE requests this treatment even though the entire EPTC System Facilities have been supported by electric ratepayers over their entire, 50-year existence and continue to be supported by electric ratepayers to this day, and despite the fact that SCE argues that the EPTC System Facilities ceased to be used and useful to electric ratepayers in August 1999. CUE recommends at a minimum, that the Commission should require SCE to allocate a portion of the gain-on-sale for the sale to ratepayers to cover all O&M and A&G costs that ratepayers have contributed to the EPTC System Facilities from September 1999 to the close of sale.

---

[15] The issue of who gets the gain when property which is no longer useful has remained in ratebase and is then sold was also raised but not decided in D.93-01-025 CPUC 2d at 598.

CUE states that SCE's witness Kelly acknowledges the EPTC assets have not performed any service for the electric ratepayers since the CALISO made its decision in August of 1999. CUE calculated, because Kelly was unable to provide a breakdown, that SCE will have received $34,250,040 from electric ratepayers since September 1999 through 2002 in O&M and A&G costs for facilities that are neither used nor useful to them.[16]

CUE notes that according to witness Kelly,

> [t]hat's the nature of forward-looking test-year ratemaking. That's the nature of frozen rates in California. …In the same symmetrical sense that Edison would typically not be allowed to recover from ratepayers many millions of dollars of unexpected or unforecasted expenditures for other operating or capital expenses until the next rate case.[17]

CUE states, however, that Mr. Kelly overlooks at least four significant facts, and based on those facts that the Commission should return to ratepayers at least all O&M and A&G costs paid by ratepayers since September 1999. Those four facts are as follows:

- SCE's approach violates the terms of the Settlement Agreement authorizing third-party use of the EPTC facilities. The Agreement states that:

  > Implementation of the Agreement does not require any recovery through electric customers' rates other than the costs or expenses normally associated with Necessary Electric Utility Uses.[18]

---

[16] CUE's opening brief, p. 23.

[17] Id., p.23.

[18] D.94-10-044, Attachment, p.13, ¶ 4.3 (emphasis added).

The settlement defines Necessary Electric Utility Uses as:

> [t]hose uses of the existing System which are necessary for the safe and reliable transportation and storage of fuel oil for Edison's electric generating units.[19]

CUE states SCE claims that the EPTC facilities have not been "necessary for the safe and reliable transportation and storage of fuel oil for Edison's electric generating units" since August 1999 at the latest.[20] CUE concludes that under the Commission-approved settlement agreement, SCE was not entitled to recover any costs and expenses for electric customers since that time.

- Second, CUE claims that neither the Commission nor SCE can ignore California law, which requires every electrical corporation to "immediately notify the Commission when any portion of [its generation] facility has been taken out of service for nine consecutive months" (Pub. Util. Code § 455.5(b)) so that the Commission can "determine whether to reduce the rate of the corporation to reflect the portion of the electric … generation … facility which is out of service." (Id., § 455.5(c).) CUE goes on to state that performance-based ratemaking (PBR) does not and could not alter this requirement of California law. It states that because SCE is seeking to sell the facilities, now is the time for the Commission to make this adjustment, by ensuring that ratepayers recover in gain-on-sale the funds needlessly expended since September 1999.
- Third, CUE states that Mr. Kelly implies that both SCE and ratepayers will win some and lose some under the PBR benefit-of-the-bargain. However, CUE notes that SCE did not sit back quietly and accept its loss when the

[19] *Id.*, Attachment, p. 7, ¶ 1.7.

[20] Joint Brief of Southern California Edison Company and Pacific Terminals LLC on Commission Jurisdiction Under Section 377, p. 3 (July 8, 2002).

procurement costs bargain that it struck came crashing down on its head; moreover, ratepayers are now retroactively covering most of SCE's losses under that bargain through the PROACT account.

- Fourth, CUE claims that Mr. Kelly acknowledges that SCE seeks a true-up of SCE's "many millions of dollars of unexpected or unforecasted expenditures for other operating or capital expenses" in the next general rate case." (RT pp. 12-13, lines 25-1.) CUE believes that this is the opportunity for the Commission to seek that true-up (if it approves the sale), through allocation of the gain-on-sale.

CUE also recommends that a refund is required by Pub. Util. Code § 455.5(c), a provision of the code pertaining to ratemaking treatment of utility generating facilities that have gone "out of service." CUE believes that SCE's electric ratepayers , under Section 455.5(c), are entitled a refund.

7.4. Ratemaking Discussion

We are troubled by the fact that from August 1999 to date, SCE collected in rates amounts estimated to be as high as $60 million to cover the operating costs of the FOP Facilities. SCE witness Kelly testified that this was all right, because Performance Based Ratemaking (PBR), the basis of which SCE electric rates are currently set, allows for the over and undercollecting due to changes not forecast originally when rates were set. We don't think it is quite that simple, as SCE in effect has had its rates frozen since 1998 as a result of AB 1890. We do know that under PBR there is some risk to ratepayers and shareholders alike. Simply stated, if revenues are higher than anticipated while expenses are less, the shareholders benefit, and conversely so for the ratepayers plus or minus a productivity factor. We do not think the August 1999 order by CALISO was so insignificant an event. Unfortunately at that time this event did not trigger an investigation as to whether a rate decrease would be appropriate. We recognize that there are always differences between the forward-looking estimates we use to adopt rates for the future test periods. Nonetheless, we know that sometimes things change, as they did for SCE and the whole energy industry with runaway wholesale energy costs which caused SCE to request an increase in electric rates.

Having said this, we unfortunately are forced to conclude that the operating costs to provide for the back-up fuel oil facilities when SCE's revenue requirement was set were at the time reasonable, and still are unless we institute an investigation (OII) at this time, to find otherwise. It is our view that any adjustment made now to recapture those operating costs would constitute retroactive ratemaking.

We do recognize the fact that ratepayers did and still do receive 12 ½% of the gross revenues that SCE receives from it oil pipeline customers.[21]

Section 455.5 is plainly not applicable in this case. CUE has misinterpreted the section. First, we have found that these facilities are no longer "generation–related facilities." Second, the provisions of Section 455.5 do not call for a refund unless or until an investigation by the Commission is made. No rate reduction is statutorily mandated, and the statute does not provide for any rate reduction retroactive to the date of the initiation of the Commission's investigation.

We should note as SCE points out that its witness, Mr. Kelly, testified to the fact that SCE was unable to sell and move out all of the fuel oil that was used for back-up fuel until January 2001. SCE argues that if the Commission makes an adjustment to recognize the collection of operating costs associated with the provision of the back-up fuel facilities which were no longer required, which it does not believe is appropriate in the first place, that the adjustment should only be from January 2001, not from August 1999.

[21] D.94-01-044, 56 CPUC 2d, p. 655.

SCE proposes to keep all the \$47.4 net gain-on-sale from the \$152.9 sale of the FOP Facilities to Pacific Terminals. In support of its position, SCE cites two decisions where the gain on sale accrues to the shareholders.

SCE proposes that the ratepayers receive the net gain of \$3.1 million from the Station Facilities sale of \$5.3 million. Again the two sales total \$158.2million. SCE states in its reply brief that the ratepayers benefit from the sale as follows:

- Ratepayers receive \$3.1 million from the sale of the Station Facilities;
- Ratepayers have returned to them approximately \$28.7 million in decommissioning costs; and
- Ratepayers receive the full recovery of the remaining undepreciated net ratepayer investment in the EPTC and Station Facilities of some \$10.9 million.

SCE contends these benefits to the ratepayers total at least \$42.7 million. We agree and accept SCE's estimate of \$3.1 million from the sale of the Station Facilities and SCE's decommissioning cost estimate of \$28.7 million based on year end 2001. But we have not seen SCE's \$10.9 million "benefit" discussed to any extent in the record by SCE, ORA or CUE. SCE now proposes to flow through to the ratepayers the "remaining undepreciated net ratepayer investment in the EPTC and Station facilities (\$10.9 million).

It appears to us that SCE is not so generous as it would have us believe as it is only giving back to the ratepayers monies they have already paid to the company, that is, returning the decommissioning expense that ratepayers have paid for and the undepreciated ratepayer contributed investment in EPTC and the Station Facilities,[22] and the $3.1 million from the sale of the Station Facilities to Pacific Terminals. Nonetheless, under SCE's proposal, ratepayers net approximately $42.7 million. The equivalent benefits to the SCE's shareholders are $106.6 million[23] as derived by SCE.

CUE did not address the gain-on-sale issue other than to suggest that ratepayers should be credited with some amount for all the EPTC operating costs collected from them since the CAISO decision.

ORA while agreeing in principle with CUE points out areas of disagreement with the Commission decisions that SCE relies upon. We read all these citations and find that there are enough differences between them and this case that we cannot rely upon them as precedent setting here. Those differences are:

- In ORA's California Water Service Co., D.94-09-032. 56 CPUC 2d, 4, a case after Redding II the Commission split the gain-on-sale 50/50 for the sale of 26 parcels of land that were no longer used anduseful. However, the Commission did say that decision applied only to water utilities.
- Regarding Redding II, ORA notes that here is a case of an asset where ratepayers are paying for an underutilized asset while receiving a share of the gross revenues from a third-party business.

---

[22] This was confusing to us at first. As shown in the Tabulation on p.6 of this decision, both ratepayers and shareholders support the EPTC System Facilities, whereas, the Station Facilities are solely supported by the ratepayers.

[23] The $106.6 million is comprised of approximately $54.2 million in remaining net book value related to shareholder investment plus $47.4 million in net gain-on-sale of the EPTC Facilities and is discussed on pp. 13-14 of SCE's reply brief.

- This differs from Redding II because the electric ratepayers that were served by these assets will not be served by the acquiring utility.

ORA states in Exhibit No. 601, p. 10-11 that it would be entirely reasonable to allocate all the net proceeds to reduce SCE's Procurement-Related Obligations Account (PROACT), and thus reduce the ratepayer burden by 1.5% of the $3 billion account. At the same time ORA states that it recognizes that SCE did engage in at-risk investment to develop these facilities. Based on SCE's capital structure ORA concludes that the return based on this sale is 150% to SCE and consequently recommends a 14% allocation to SCE and an 86% of the net gain to the ratepayers via credit to PROACT. SCE contends that this is unreasonable and violates the Settlement Agreement between it and the Commission.

We are left with the task of determining a reasonable allocation of the net gain-on-sale of $47.4 million. We do not believe it is reasonable to allocate the whole gain to the ratepayers on the basis that the plant was once "generation-related assets" as ORA suggests. We do not know why SCE did not dispose of these assets as it did its power plants pursuant to AB 1890. But it did not do so, and those assets are no longer "generation-related assets." They are the assets of a regulated pipeline company; therefore, we will not treat them as "generation-related assets."

In making our decision we are guided by the facts underlying D.94-10-044, A.94-02-049 CPUC 2d, pp. 642-680. In that decision the Commission authorized SCE to transform its oil pipeline system into a third-party long-term oil transportation pipeline, making it a pipeline corporation, subject to Commission jurisdiction. In this decision, the Commission adopted the "Gross Revenue Approach" for ratemaking. It noted that SCE will pay all third-party related costs from its share of the gross revenues. Ratepayers will receive 12 ½% of gross revenues and will continue to accept the risk and costs of the existing pipeline system. Now this entrepreneurial endeavor of SCE's is being sold or liquidated. We see this as liquidation of an enterprise and see no reason not to allocate the proceeds on the same basis as the gross revenues are allocated between shareholders and ratepayers, that is, 87 ½% to the shareholders and 12 ½%to the ratepayers. We will apply these same percentages to the gross proceeds, $152.9 million, from the sale. The $152.9 million is the gross revenues from FOP Facilities and equates to the $47.4 million net-gain-on sale. The resulting allocation provides $19.1 million[24] to the ratepayers or approximately a 40.3%/59.7%, ratepayer/shareholder split. We believe that this is fair to both shareholders and ratepayers as the ratepayers supported this endeavor from inception. This allocation is fair to the shareholders as they receive a net gain $28.3 million.

We will direct that the ratepayers' share of the net gain, $19.1 million, be credited to the PROACT or to the Electric Distribution Revenue Adjustment Balancing Account if the PROACT has been eliminated at the time of crediting.

SCE contends in its reply brief on pp. 16-17 that any adjustment to the PROACT would be a violation of the Settlement Agreement between it and the Commission. It cites Section 2.9, which reads in part as follows:

> [i]t is the intent of the Parties that SCE *actually recover* Procurement Related Obligation recorded in the PROACT, *without offset*, **as rapidly as possible**….[Emphasis added by SCE in italics; bold by us.]

[24] $152.9 times 12 ½% equals $19.1 million.

It strikes us as rather strange that on one hand SCE proposes to credit the PROACT with the ratepayers net gain-on-sale from the Station Facilities,[25] but on the other hand claims that it would be a violation of the Settlement Agreement if any of the net gain-on-sale from the EPTC Facilities is allocated to the ratepayers and credited to the PROACT. If we put the emphasis on "**as rapidly as possible,**" it would seem that we are accomplishing that goal by directing the ratepayers' net gain-on-sale that we calculate to be $19.1 million.

SCE also argues in its reply brief that ORA's proposed 86%-14% split of the net gain (to make up for the supposedly unbalanced impact of the Settlement Agreement) is essentially a request that the Commission now unilaterally amend the Settlement without SCE's consent, which is impermissible under the Settlement.[26] First, we are not adopting ORA's recommendation, and second, we fail to see the applicability of that settlement provision to our determination to credit the PROACT with the ratepayer net gain-on-sale.

With regard to CUE's recommendation that a refund is required by Pub. Util. Code § 455.5(c), because these are utility generating facilities that have gone "out of service," we find that Section 455.5 (c) is plainly not applicable in this case. CUE has misinterpreted the section. First, we have found that these facilities are no longer generation facilities. Second, the provisions of Section 455.5 (c) do not call for a refund unless or until an investigation by the Commission is made. No rate reduction is statutorily mandated, and the statute does not provide for any rate reduction retroactive beyond the date of the initiation of the Commission's investigation.

---

[25] A.02-03-035, Ratemaking Treatment of Station Facilities, pp. 38-39.

[26] Settlement Agreement Section 5.3.

As to the issue of the residual $9.3 million decommissioning cost related to the fuel oil facilities not included in the sale, we agree with SCE that the shareholders are bearing the risk if the decommissioning costs exceed $9.3 million or extend beyond five years. SCE notes that if the costs are less than $9.3 million at the end of five years, then the ratepayers will receive the remaining unspent amount. SCE's plan is fair.

7.5. Other Ratemaking Issues

SCE has proposed removing the EPTC System Facilities cost from its revenue requirement by the filing of an advice letter to reduce PBR Distribution rate by approximately 0.0289 cents/kWh. That is reasonable.

SCE also proposes to return the decommissioning costs to the ratepayers by recording the amount to the SRBA, thereby reducing the amount of Recoverable cost during the month in which it makes the credit. Then in the month that the refund is recorded, it will be an increase in the amount of Surplus applied against the PROACT balance. SCE proposed to handle the Station Facilities $3.1 million gain-on-sale in this manner, and we will direct them to do likewise with the ratepayers' $19.1 million portion of the EPTC System Facilities gain-on-sale.

Other than ORA's issue regarding interest on the as yet refunded decommissioning costs, no party opposed SCE's refund proposals.

8. Public Interest

Pub. Util. Code § 851 requires that a public utility obtain Commission approval before it may sell or otherwise dispose of property necessary or useful in the performance of its duties to the public. Pub. Util. Code § 854 requires approval for a change of control of the utility. The purpose of these sections is to enable the Commission, before any sale of a public utility or its property is consummated, to review the transaction and to take such action as a condition of transfer, as the public interest may require.[27]

8.1. SEC's and Pacific Terminals' Position

The Applicants listed multiple benefits as a result of the proposed sale. They are as follows:

- SCE's creditworthiness will be improved by selling a valuable asset no longer needed for core electric utility functions.
- SCE's ratepayers will have decommissioning funds returned to them.
- The gain-on-sale from the Station Facilities will be allocated to the ratepayers.
- Further collection of operating costs and depreciation expense from the ratepayers will terminate.
- SCE's ratepayers will be relieved from environmental responsibilities associated with the ownership of the Fuel Oil Pipeline Facilities.
- The new owner, Pacific Terminals, is an affiliate of a recognized and qualified pipeline operator. In addition, Pacific Terminals states that as a part of Pacific Energy Group, which owns a number of profitable midstream crude oil companies, including PPS LLC, a pipeline company that is subject to the Commission's jurisdiction, it has considerable experience in managing midstream crude oil assets.
- Pacific Terminals states that it has the financial ability that SCE doesn't to make necessary improvements to the system. Due to financial constraints experienced over the past two years and which continue, SCE has suspended and deferred certain improvements to the FOP Facilities, which customers have

[27] San Jose Water Co. 10CRC 56 (1916); San Francisco Thermal, Limited Partnership et al., D.00-06-55; 2000 Cal. PUC Lexis 333.

requested and which would improve safety. Pacific Terminals claims that it is committed to undertake these modifications.

8.2. CUE's Position

Cue states that the public interest would best be served in this instance if the Commission denied the application. CUE believes that the Applicants have not demonstrated that the proposed sale would meet any of the following public interest factors:

- the proposed sale will preserve or enhance competition;
- the proposed sale will maintain or improve the quality of management of the resulting utility;
- the proposed sale will be fair and reasonable to affected employees;
- the proposed sale will preserve or enhance the environment; and
- the proposed sale provides for mitigation measures to prevent significant adverse consequences that may result.

CUE believes that approving the sale will not preserve or enhance competition, just the opposite. (See Section 9 Discussion on Market Power).

CUE does not believe the proposed sale would maintain or improve the quality of management with the new owner, Pacific Terminals. CUE cites from its exhibit, Ex 302, a EPTC presentation to Commissioner Wood in July 2001, and notes SCE has invested millions of dollars in transforming the system from a fuel oil backup service for generating stations to a third-party black oil storage and transport service, that as a result of SCE's management, EPTC "is a strategically positioned oil and storage and transportation asset in Southern California for meeting oil refinery needs," a "state-of-the-art dispatch system," an "exceptionally well-maintained pipeline," a "highly experienced work force," and steadily is increasing revenues. CUE cites other statistics from Ex. 302 in support of its position.

In support of its position that the quality of "new" management of the pipeline facilities will not be of the quality of SCE, CUE cites a newspaper article in the New York Times, which was submitted as a late-filed exhibit. This article, while not addressing Pacific Terminals or its energy affiliates, was critical of the energy affiliates' majority owner, the Anschutz Corporation, relative to its telecommunications dealings. CUE states that it is not citing the article for the truth of its statements but rather to show the Commission that significant questions remain regarding the Anschutz companies that have not been addressed by the Applicants.

CUE also notes that one of the affiliate telecommunications companies, was fined in 2001 for proceeding with construction of a right-of-way without receiving the proper authorization or conducting the required environmental review. CUE believes the record should be re-opened to ask the Applicants to provide witnesses to address CUE's concerns.

CUE does not believe that the sale would be fair and reasonable to affected employees. (See Section 9 Discussion.) CUE also does not believe that the sale will preserve or enhance the environment and provide for mitigation measures to prevent significant adverse consequences. (See Section 6 Discussion.)

Finally, CUE believes that SCE's ratemaking proposals are not in the public interest. (See Section 7 Discussion.) In conclusion, CUE believes that sale would not preserve or enhance competition, improve the management of the resulting utility, be fair or reasonable to affected employees, or protect the environment, and therefore, the sale is adverse to the public interest.

8.3. Discussion

We conclude that this sale is in the public interest. We agree with the Applicants that the creditworthliness of SCE can only be enhanced with the sale of the FOP Facilities, whether it receives all of the gain-on-sale or shares some benefits with the ratepayers. Ratepayers will benefit through the return of the decommissioning costs of some $28.7 million as well as all the gain-on-sale from the sale of the Station Facilities; ratepayers will be relieved of the operating and maintenance, depreciation and administrative costs associated the FOP Facilities, as well as the necessity of any future environmental concerns, as that will become the responsibility of Pacific Terminals.

We note that the Applicants responded in their briefs to the CUE attempt to argue that the proposed sale should be rejected because it will not maintain or improve the quality of management of the EPTC system. CUE seems to base this conclusion on a single newspaper article purporting to discuss financial misdealings among the executives of telecommunications firms including Qwest Communications (Qwest). We are not allowing this article into the record and we place little or no value to it. As Applicants note, the article is unsubstantiated and inadmissible hearsay. The article bears no relevance to any material issue in the case now before us.

As to the quality of management, Pacific Terminals notes that the President of the company, Irvin Toole, Jr. has over 35 years of experience in the oil pipeline industry. (Exhibit No. 100, pp. 1-2.) Pacific Terminals has a management team that averages over 20 years of experience in pipelines and terminals, with several of its senior managers having considerably more that 20 years of operating experience in the black oil terminating sector. We are satisfied that Pacific Terminals will provide much more than capable management for its customers. We have addressed environmental issues and the impact on EPTC employees in Sections 6 and 10 respectively.

9. Market Power and Competition

The issue here is the fact that Pub.Util. Code § 854 (b) (3) provides that before the Commission may authorize a sale of this type, it must find that the proposed sale does not adversely affect competition.

9.1. CUE's Position

CUE states that transferring these assets to an entity that is affiliated with an oil exploration and production company and a proprietary crude oil blending company, both of which have interests in manipulating the price of oil, makes no sense. CUE goes on to state that in addition, transferring these assets to an entity that will co-manage a pipeline company, with interests in reducing storage and thereby increasing throughput on its own pipelines, make no sense either. CUE notes that EPTC has competed directly with this pipeline corporation in the past and could do so again in the future, and if Pacific Terminals owns the EPTC facilities, it will not use the facilities to compete against its own affiliate, reducing competition and raising additional anticompetitive concerns.

9.2. SCE's Position

SCE position is very similar to Pacific Terminals (below), and therefore is not recited.

9.3. Pacific Terminals' Position

Pacific Terminals claims that its purchase of the FOP Facilities will not adversely impact competition, but rather improve competition for the following reasons:

- Customers support the sale of the FOP Facilities. Pacific Terminals states that the sale will improve competition by introducing a new competitor providing black oil terminaling and local pipeline transportation services who is interested in growing the business and making service improvements. Pacific Terminals points out that only one customer[28] filed a protest to this application. That customer, BP WCP, once it understood that Pacific Terminals intended to assume the existing contracts and was willing to make plant modifications, endorsed the sale as well as Pacific Terminals' proposal to continue to set charges for such services based on arms length negotiations.

- The FTC and the DOJ determined that the sale of the FOP Facilities to Pacific Terminals did not raise competitive concerns. Pacific Terminals states that the DOJ/FTC, which are charged with reviewing acquisitions for anti-competitive impacts under the Hart-Scott-Rodino Act, concluded that the transaction was not one that requires further investigation and provided early termination.
- The record evidence conclusively demonstrates that competition will not be adversely impacted. Pacific Terminals notes that while the DOJ and the FTC quickly concluded that the proposed sale did not raise competitive concerns, CUE alleged in its protest that Pacific Terminals, acting alone or in concert with its affiliated companies could somehow exercise market power using the FOP Facilities so as to increase the overall profitability of its ultimate parent, the Anschutz Company; CUE failed to sponsor a single witness or present any evidence that would support this proposition. Pacific Terminals states that its witness, Dr. George R. Schink, a Ph.D. economist with extensive experience in analyzing competition in the oil pipeline industry, firmly and completely refuted CUE's unfounded allegations and concluded that the sale of the FOP Facilities to Pacific Terminals will not adversely impact competition and will not cause anti-competitive behavior.

Pacific Terminals also stated that Dr. Schink noted that Pacific Terminals and PPS LLC are subject to regulatory oversight by the Commission, which

[28] EPTC serves eleven different customers, with a total of 23 contracts. (Exhibit No. 100, p. 9.)

would inhibit their ability to even attempt to engage in anti-competitive behavior. Dr. Schink also noted that the companies that own Pacific Terminals or are affiliated with it would not benefit even if Pacific Terminals could somehow restrict the supply of terminal services in the Los Angeles basin, because the revenues of these companies are tied to the throughput of crude oil, and not its price.[29] Pacific Terminals states that it and its affiliated companies do not have the means, motive or the opportunity to engage in the anti-competitive behavior that CUE alleges.

Pacific Terminals states that CUE argues that EPTC and PPS LLC's predecessor, Pacific Pipeline System, Inc. (PPSI), have competed in the past and that the sale of the EPTC Facilities to Pacific Terminals will reduce competition for transport and storage services in the future; CUE claims that prior to the time that PPSI's pipeline was constructed, PPSI and the proposed Cajon / EPTC pipeline competed to construct a long-haul pipeline from the San Joaquin Valley to the Los Angeles basin. Pacific Terminals states that CUE alleges that SCE has not built the Cajon / EPTC project and that if the sale of the EPTC Facilities is made. Pacific Terminals will have no incentive to construct this pipeline. Pacific Terminals notes that long haul pipeline proposals that may have competed against one another have no relevancy to this proceeding. It states that the competition is over – PPSI won – EPTC has not proposed to use its facilities for long haul business.

---

[29] CUE claims that Anschutz Exploration Company hold mineral leases in California. But, as Mr. Toole (President and CEO of Pacific Terminals) explained, there has been no exploration on these leases.

9.4. Discussion

We believe that SCE and Pacific Terminals have addressed CUE concerns. We believe Pacific Terminals has addressed CUE's comments about a long haul pipeline competition some years ago and how it is not relevant to this proposed sale. We are persuaded by the fact the neither the FTC or the DOJ considered the proposed sale to be anti-competitive. Dr. Schink addressed, to our satisfaction, the absence of anti-competitive behavior by Pacific Terminals. We also note that there was only one customer protest relative to the Applicants' proposal, and that protest was resolved. Pacific Terminals addressed the market dominance issue to our satisfaction. Based on the above, we conclude the proposed transaction will have no adverse impact on competition.

10. SCE's Affected Utility Employees

10.1. SCE's Proposal

SCE, through its Ex. SCE-3, Workforce Impact Mitigation Measures provided its plans for employee redeployment and / or severance from the company. As of June 2002, there were 56 ETPC employees, of which 33 are covered by a collective bargaining agreement with Utility Workers Union of America (UWUA), A.F.L. – C.I.O., Local No.246, while 23 fill management and administrative roles. SCE states that it will continue to operate EPTC until the close of sale. SCE states that although the employees may fully recognize that their current jobs with SCE are being eliminated, the potential for receiving worker protection benefits to assist them while looking for their next position is a positive inducement to continue working – in this case this case, providing their services and maintaining the continuity of the EPTC operation – until severance benefits become available.

SCE states that they and the UWUA have bargained a reasonable set of worker protection benefits for those workers who are displaced from their employment at SCE. These benefits are known as the Pipeline Severance Benefits (PSB). This package includes early retirement benefits, severance payments, outplacement and educational assistance programs and specifies the procedures that will be followed for force reduction. SCE notes that similar benefit programs are in place for employees who are not represented by a union but who likewise would experience negative impacts due the sale of the EPTC facilities. SCE estimates that its cost for these measures will be about $4.8 million.

10.2. CUE's Position

In its briefs, CUE states that the evidence in SCE Ex. 3, p. 2, Workforce Impact Mitigation Measures, shows that EPTC's employees would lose their jobs as a result of the proposed transfer. CUE claims that SCE witness Nelson hints that some of these employees might be redeployed to other positions with SCE and describes available severance plan benefits, but does not assure continued employment for any of the affected employees. (Id., p. 1.)

CUE notes that Pacific Terminals claims that that it "anticipates that it will hire a substantial number of the current EPTC employees,"[30] but does not make a commitment to do so. CUE cites Ex. 303, which is an internal memo from the SCE' Vice President of the Generation Business Unit who had responsibility for EPTC management, to highlight the accomplishments of the EPTC employees and the unit itself.

10.3. Pacific Terminals' Proposal

Pacific Terminals notes in its reply brief that while CUE stated that Pacific Terminals had failed to make any commitment to hire current EPTC employees,

[30] Ex. 100, p.12.

CUE ignored the fact that at the time of the hearing, it was impossible for Pacific Terminals to be more definitive. Pacific Terminals states that it did not have the opportunity to interview the employees who might be interested in employment. Pacific Terminals states that these preliminary steps have now been taken, and it has requested that the Commission accept late-filed Exhibit No. 111, which summarizes the results of the interview and job offer process.

Pacific Terminals also notes that CUE overlooks the workforce mitigation measures proposed by SCE and notes that CUE has not challenged the fairness or reasonableness of SCE's Workforce Mitigation Measures.

10.4. ORA's Position

ORA does not oppose SCE's Workforce Mitigation Measures.

10.5. Discussion

We have reviewed SCE's Workforce Mitigation Measures and late-filed Exhibit No. 111 and CUE's comments. We believe that the measures proposed by SCE are reasonable. As of October 2002 there were 32 represented employees and 23 management and administrative employees, for a total number of 55 employees, down one from the time the application was filed. Exhibit No. 111, which was late-filed (and is accepted), provides the following breakdown of Pacific Terminals' results of its interviewing process to which we have added the last line to provide an additional perspective:

	Applications/ Interviews	Job Offers	% Offers	Acceptances
Unrepresented EPTC Employees	15	11	73%	10
Union Represented EPTC Employees	30	27	90%	26
Total Interviewed	45	38	84%	36
Total EPTC Employees	55	38	69%	36

From the above tabulation, we can conclude that of the total of 32 represented employees of EPTC, 30 received interviews or filed applications, and 27 received offers. The 23 managers and administrative employees did not do as well; there were 11 offers with 10 acceptances.

We note that CUE filed a response to late-filed Exhibit No. 111, a declaration of Daniel Dominguez, Business Manager, UWUA Local 246, providing the following information:

- On October 8, 2002, EPTC represented employees submitted their selections under the first cycle of SCE's Reduction In Force (RIF) process for the EPTC facilities. Of the 33 representative employees currently working at EPTC, 16 elected to remain in SCE's employ during the first cycle of the RIF process. One employee has accepted a job transfer to SCE's transmission and distribution department. This means that, if the EPTC facilities are sold, these 17 employees have currently chosen to move to other, non-EPTC positions with SCE rather than leave SCE's employ.
- Sixteen of the EPTC employees have selected to take the Pipeline Severance Benefit (PSB) and sever their employment with SCE. Of the sixteen employees that selected PSB, two did not apply for a job with Pacific Terminals and one applied but was not offered a job.

- In total 20 of the 33 EPTC represented employees have currently (October 2002) stated their intention not to work for Pacific Terminals.

We interpret Mr. Dominguez' declaration together with Pacific Terminals' Exhibit No. 111 as follows:

- If 16 of the represented EPTC employees accepted SCE's PSB, and one accepted a transfer, then SCE's Workforce Mitigation Measures, in this case, are successful. Of course, as Pacific Terminals responded to CUE's filing, this does not mean that these employees have accepted or have been offered new positions with SCE, but more importantly that 27 were offered positions, and 26 accepted offers to work for Pacific Terminals.
- Mr. Dominguez does not tell us what fate has in store for the other 16 EPTC represented employees. If we are to believe Exhibit No. 111, where 27 offers were made to represented EPTC employees, we can infer that some, if not all, of these were among the 26 who accepted offers from Pacific Terminals and some may be among the 16 who took the PSB or the one who transferred. But it is safe to say that there appear to be few, if any, represented employees who will be without employment, either with SCE or Pacific Terminals. Pacific Terminals reiterates that 26 of 27 EPTC employees interviewed accepted offers of employment. We can understand why an employee might say he or she would chose to continue working for SCE, but faced with the possibility of the sale being approved, also accept employment with Pacific Terminals.
- We do not know what will become of the 12 managerial and administrative EPTC employees who did not receive offers for employment with Pacific Terminals. We can hope and assume that they will be offered other jobs within SCE or will take advantage of the Severance Plan for the unrepresented employees.

In the best of all worlds, we would like to see no negative impact on any of SCE's employees due to this proposed sale; we cannot, nor can the companies, guarantee such a result. In conclusion we believe that SCE and Pacific Terminals have mitigated as much as possible the effect of this proposed sale on EPTC employees. Therefore, § 854 (c)(4) is satisfied.

11. Other Requests

In its opening brief Pacific Terminals asks that the Commission to authorize it the same methodology for establishing charges for services that it granted to EPTC. It also requested that its contract negotiated with individual customers should not have to be made available for public inspection or require prior Commission approval. It cites the fact that terminaling and local transportation of black oil in the Los Angeles basin is very competitive. No party commented on Pacific Terminals' requests. We approve Pacific Terminals' request.

12. Late Filed Exhibits and Responses

The parties made a number of filings after the August 2002 hearing. We are accepting all of them as part of the record, except CUE's filing of the aforementioned newspaper article, and will give them the appropriate weight in our decision process, including late-filed Exhibit No. 111 and Mr. Dominguez' declaration in response to SCE's Workforce Mitigation Measures and Pacific Terminals' application and interview process.

13. Conclusion

We conclude that this proposed sale in the public interest. We also conclude that § 377 of the Pub. Util. Code does not apply to this sale. The applicants have met the requirements of §§ 851 and 854.

14. Comments on the Proposed Decision

The proposed decision of the Administrative Law Judge was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Comments were received on June 9, 2003 from SCE, Pacific Terminals and ORA, all of whom support the proposed decision. Where appropriate, clarifying language has been added.

15. Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner and Dean J. Evans is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. EPTC System Facilities consists of assets now used for SCE's commercial oil storage and transport operations for third parties.
2. The total sale price for the EPTC System Facilities and the Station Facilities is $158.2 million, $152.9 for the EPTC System Facilities, and $5.3 million for the Station Facilities.
3. The net gain-on-sale for the EPTC System Facilities is $47.4 million and $3.1 million for the Station Facilities.
4. As a result of AB 1890, SCE sold all of its generating stations that used residual fuel oil and natural gas.
5. SCE continued to provide back-up fuel oil to the new owners of its former generating stations.
6. On August 26, 1999, the CALISO determined that back-up oil fuel facilities were no longer necessary.
7. In D.01-02-059, the Commission recognized that the EPTC System Facilities were no longer "generation-related assets," but rather an "oil pipeline" utility.
8. SCE prepared a Workforce Mitigation Measures plan to minimize the impact on SCE's employees from the sale of the FOP Facilities.
9. Pacific Terminals has the financial resources and managerial expertise to operate the FOP Facilities.
10. SCE electric ratepayers benefit from this sale.
11. SCE's creditworthiness will be improved.

12. SCE believes the gain-on-sale from the EPTC Facilities should accrue to the shareholders.

13. ORA believes a large percentage of the gain-on-sale should accrue to the ratepayers.

14. Future CEQA compliance will be Pacific Terminals' responsibility.

15. SCE electric ratepayers will have $28.7 million of decommissioning costs returned to them with the possibility of more later.

16. The South Coast Air Quality Management District is the Lead Agency for the proposed project pursuant to CEQA.

17. The South Coast Air Quality Management District originally prepared a Mitigated Negative Declaration for this group of facilities which found that the proposed project, the mitigation measures applicable to the project, and the mitigation monitoring protocols, eliminate and/or reduce the potential environmental impacts to a less than significant level.

18. The Commission is a Responsible Agency for the proposed project pursuant to CEQA and previously adopted the South Coast Air Quality Management District's MND for these facilities in Decision 94-10-044.

19. The Commission has considered the South Coast Air Quality Management District's MND in its decisionmaking process in accordance with the CEQA Guidelines Section 15096(f).

20. An Addendum for this project was prepared pursuant to CEQA Guidelines Section 15164.

21. The revenue sharing mechanism between SCE and its ratepayers that was authorized in D.94-10-044 shall cease and is not applicable to Pacific Terminals.

Conclusions of Law

1. The sale of SCE's FOP Facilities to Pacific Terminals is in the public interest.

2. SCE's FOP Facilities are subject to the Commission's jurisdiction under Pub. Util. Code §§ 216, 227 and 228 as an oil pipeline.

3. Section 377 of the Pub. Util. Code does not apply to the FOP Facilities.

4. SCE's Workforce Mitigation Measures will minimize employee disclocations.

5. Section 455.5 of the Pub. Util. Code is not applicable in this instance.

6. Applicants have met the requirements of §§ 851 and 854.

7. It is reasonable to apportion the gain-on-sale of the EPTC Facilities by using the gross sales price times the gross revenues 12 ½% ratepayers/87 ½% shareholders split.

8. Based on our apportionment, ratepayers should receive $19.1 million of the $47.4 million gain-on-sale, and the shareholders receive $28.3 million.

9. Crediting the ratepayer gain-on-sale to the PROACT (or to the Electric Distribution Revenue Adjustment Balancing Account, if the PROACT has been eliminated by the time of such crediting) is reasonable and fair.

10. Refunding some or all of the operating and maintenance costs that the ratepayers paid for EPTC System Facilities since August 1999 would constitute retroactive ratemaking.

11. The USOA established by FERC confirm that generation assets include more than power plants, since separate accounts exist for elements such as fuel oil pipeline and facilities.

12. Section 377 does not bar the Commission from authorizing SCE to dispose of the EPTC Facilities at issue here.

13. The sale should not cause anti-competitive behavior by Pacific Terminals.

14. The South Coast Air Quality Management District's MND was prepared pursuant to CEQA and is adequate for this Commission's decision making purposes.

15. The Commission has considered the South Coast Air Quality Management District's MND in its decision making process in accordance with the CEQA Guidelines Section 15096(f).

16. Pursuant to Section 15096(g)(1) of the CEQA Guidelines, the Commission should adopt, as conditions of project approval, the mitigation measures identified in the South Coast Air Quality Management District's MND.

17. The preparation of an Addendum pursuant to CEQA Guidelines Section 15164 is appropriate for the transfer of the subject facilities.

18. The Commission should require as terms of project approval the conditions applicable to the transfer as outlined in the Addendum attached to this decision.

19. In order to eliminate uncertainty in the parties' business dealings, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Application 02-03-035 is approved under Pub. Util. Code §§ 851 and 854.

2. The South Coast Air Quality Management District's MND was prepared pursuant to California Environmental Quality Act (CEQA) and is adequate for this Commission's decisionmaking purposes.

3. The mitigation measures outlined in the South Coast Air Quality Management District's MND are hereby made conditions of project approval by this Commission Order.

4. The preparation of an Addendum pursuant to CEQA Guidelines Section 15164 is appropriate for the transfer of the subject facilities.

5. The conditions applicable to the transfer as outlined in the Addendum attached to this decision are imposed as terms of project approval by this Commission order.

6. Southern California Edison Company (SCE) shall credit Procurement Related Obligations Account (PROACT) (or the Electric Distribution Revenue Adjustment Balancing Account, if the PROACT has been eliminated by the time of such crediting)with the net gain-on-sale of the Station Facilities of $3.1 million and the net ratepayer gain-on-sale of $19.1 million from Edison Pipeline and Terminal Company (EPTC) System Facilities and the decommissioning costs returned to the ratepayers.

7. SCE shall file an advice letter to reduce rates due to the ratepayers no longer having to support the EPTC System Facilities that are being sold to Pacific Terminals.

8. Pacific Terminals is authorized to use the same methodology as EPTC did to establish rates.

9. Pacific Terminals shall file its tariff with the Commission's Energy Division within 45-days, which shall indicate that the terms and conditions and charges

for service shall be established through negotiated contracts between the customer and Pacific Terminals.

10. This proceeding is closed.

This order is effective today.

Dated July 10, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I will file a dissent.

/s/ CARL W. WOOD
Commissioner

I reserve the right to join Commissioner Wood's dissent.

/s/ LORETTA M. LYNCH
Commissioner

May 7, 2003

CEQA Addendum
California Public Utilities Commission
A.02-03-035
Southern California Edison Transfer of Edison Pipeline and Terminal Company (EPTC) Facilities to Pacific Terminals

Summary

Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15164, the California Public Utilities Commission (CPUC) has prepared this Addendum to the Mitigated Negative Declaration (MND) published by the South Coast Air Quality Management District (SCAQMD) and previously adopted by this Commission in Decision 94-10-044.

As described below, the Applicants (Southern California Edison and Pacific Terminals) have applied to transfer by sale, with slight modifications, a system of facilities the operation of which were the subject of an MND previously adopted by the Commission. This transfer and associated modifications were reviewed by the agency and found not to result in either any new, previously undisclosed impacts or any previously disclosed impacts of greater severity. Therefore, the agency finds that the preparation of an Addendum pursuant to CEQA Guidelines Section 15164 is appropriate for the transfer of the subject facilities, as modified.

This document provides an overview of the transaction; identifies the facilities subject to transfer, their operational history and regulatory regime; describes the modifications to the set of facilities; and defines their future ownership and conditions of transfer.

Project Description

Overview

In March of 2002, Southern California Edison (SCE) and Pacific Terminals (PT) jointly filed Application A.02-03-035 requesting authority to sell and transfer pipeline facilities to PT and authorizing PT to operate them as a public utility. Subsequent to the filing of the application, SCE and PT filed the following documents in support of their application:

1. Proponent's Environmental Assessment (PEA): "Sale of Edison Pipeline and Terminal Company and Oil Pipeline Facilities Assets," June 21, 2002

2. Appendix A to the PEA: "South Coast Air Quality Management District, Final Negative Declaration: Edison Fuel Oil Pipeline and Storage System Expanded Utilization Proposal," SCH No.94061041, August, 1994

3. Supplement to PEA: "Summary of Existing Air Quality Permits for Various Facilities Subject to the Joint Application," October 17, 2002

4. Initial Response to informal Data Request from Energy Division staff: "Summary of Facility Air Quality Permits And Current Facility Operations"

Southern California Edison Company will transfer to Pacific Terminals a group of facilities (EPTC) that were previously operated by SCE/EPTC for third-party terminalling and bulk transfer operations. This group of facilities, its operation as a system, and three phases of contemplated operation, including facility upgrades and conversions, were previously subject to an environmental review and resultant MND in 1994 by the SCAQMD, including required mitigation measures applicable to facility operations, upgrades, and conversions for each of the three phases. Two modifications to the facilities in the 1994 MND are contemplated within the facilities proposed for transfer from SCE/ETPC to PT: (1) four tanks at Los Alamitos and two tanks at Long Beach will be added to the inventory of facilities subject to the transfer; and (2) a small number of facilities previously covered in the 1994 MND have been decommissioned and removed from the SCE/EPTC inventory, and are therefore not a part of the subject transfer.

Facility Background

The original facilities consist of 120 miles of pipeline, one tank farm, storage facilities adjacent to 7 electric generating stations, and 11 heating and pumping stations. These facilities were installed to provide primary fuel supply to SCE power plants. The facilities became secondary in the 1980s when natural gas became the fuel of choice for economic and environmental reasons – the facilities provided only back-up fuel capability in the 1980s. With increasingly stringent air quality regulations and high availability of low-cost natural gas, the bulk oil facilities experienced declining use throughout the late 1980s and early 1990s and were only on call for emergency back-up fuel.

SCE received approval from the CPUC to transfer these facilities to a subsidiary (SCE/EPTC) in 1994 for the purpose of providing third-party terminalling and bulk transfer services, including potential increases in use and potential changes in product mix. The SCAQMD was the CEQA Lead Agency and performed an environmental review of the facilities subject to the 1994 transfer and issued an MND in 1994. The Commission approved the 1994 transfer and adopted the SCAQMD MND as a Responsible Agency under CEQA. These EPTC facilities have been operated as a bulk terminalling and transfer system since 1994, primarily serving contract customers. In the late 1990s SCE sold its power plants in anticipation of a restructured marketplace for electric power, and in 1999 the California Independent System Operator (CAISO) subsequently determined that SCE therefore no longer needed back-up fuel oil capability, resulting in SCE's determination that the facilities were surplus. The new owners of the power plants were not interested in the EPTC facilities as they either would not or could not burn fuel oil in the power plants.

SCE/EPTC has decommissioned and abandoned some of the tanks and pipeline facilities originally included in the SCE/EPTC group of facilities that were reviewed and transferred in 1994 by SCAQMD and the CPUC, respectively. SCE/EPTC has also begun a series of upgrades and conversions for some of the facilities as contemplated in the 1994 SCAQMD MND, including installing floating roofs and double bottoms in some tanks as well as some control system upgrades. The facilities are spread out over a broad area, including: Long Beach, Los Alamitos, and Huntington Beach as well as a number of pumping stations located along the pipeline alignments.

Current and Future Owners

From 1994 until the present, SCE/EPTC has engaged in terminalling and storage for refinery operations, known as the "black oil" business -- primarily involving crude oil, "gas oil," heavy fuel oil, and bunker fuel, but not jet fuel or gasoline products. PT is a subsidiary of Pacific Pipeline Systems Incorporated (PPSI), a Commission-regulated crude oil transportation and trunk line business with facilities extending from Bakersfield (Kern County) to Long Beach (Los Angeles County). PT intends to operate the EPTC system and facilities in the same manner as SCE/EPTC did and to continue serving SCE/EPTC's current "black oil" markets under existing operations. PT will be a Commission-regulated common carrier and public utility subject to the Commission's jurisdiction, and has asked for the same ratemaking authority as SCE/EPTC. PT will take assignment of SCE/EPTC's existing contracts where possible and will accept assignment of SCE/EPTC's existing contracts "as is" with respect to the number of inventory cycles, degree of heating, and type of products subject to the contracts. PT will not seek to operate the SCE/EPTC facilities outside of the bounds of the activities and applicable mitigations contemplated in the 1994 SCQAMD MND without seeking further authority and, if necessary, environmental review from this Commission and any other relevant agencies. The SCE/EPTC facilities are subject to various permits issued by the SCAQMD and other agencies, and upon transfer PT will not operate the facilities outside of the bounds of those permits without seeking appropriate permit review and approval by the appropriate jurisdictional agencies.

The 1994 SCAQMD MND contemplated a series of phases for eventual full use of the SCE/EPTC facilities, including mitigation measures designed to ensure compliance with SCAQMD Rule 463 (e.g., specific control technologies and emission reduction offsets). The initial phase included the modification of up to 19 tanks to enable SCE/EPTC to commence third-party operations. Subsequent phases of modifications were contemplated and reviewed in the 1994 MND to accommodate increases in third-party service if market conditions warranted. Indeed, although it was not considered likely, the 1994 MND considered that additional oil pipeline facilities could also be included in SCE/EPTC operations if market conditions warranted. To date, SCE/EPTC has completed most of the proposed initial phase modifications, including: conversion of fixed roofs to external floating roofs on certain above-ground storage tanks; and installation of double bottoms on tanks and double seals on the floating roofs as required by the 1994 MND mitigation monitoring plan. SCE/ETPC had begun a series of subsequent facility changes contemplated by the MND, such as changes at Los Alamitos Tank No. 10 and the upgraded control system; however, those changes have now been suspended and PT will now assume those remaining obligations under the proposed transfer.

Six existing tanks (four at Los Alamitos and two at Long Beach) were not originally included in the previous transfer or environmental review conducted in 1994. These facilities are similar in size, type, function, and permits to the facilities reviewed in the 1994 MND. All six of these tanks have existing permits from the appropriate regulatory agencies and are in compliance with or being operated consistent with the mitigation measures in the 1994 SCAQMD MND. Pacific Terminals will operate these tanks for the storage of products for which they are already currently permitted, and PT does not have any plans to modify the tanks or change the service for which the tanks are permitted.

Should PT construct new tank facilities, retrofit existing facilities, or change service beyond that evaluated in the 1994 MND, new discretionary permits and associated environmental reviews would be required. In the transfer, PT will agree to the imposition of the applicable mitigation measures in the 1994 MND on these six tanks and include them in the management regime contemplated by the 1994 MND for the entire set of SCE/EPTC facilities. Should PT contemplate additional changes to the operations or facilities of the SCE/EPTC package outside of the bounds contemplated in the 1994 SCAQMD MND and/or the existing permits for those facilities, PT will seek further authority and environmental review, if necessary, from this Commission and any other relevant agencies.

Impacts of Project Modifications

Review of the transfer of the facilities as modified indicates that, with the implementation of the existing mitigation measures applicable to the project facilities and the applicant-proposed conditions outlined and recommended below, there would be no new, previously undisclosed impacts or any previously disclosed impacts of greater severity.

Recommendations

With the amendment of the SCAQMD MND to include the additional facilities at Los Alamitos and Long Beach and the requirement that those facilities be subject to the existing mitigation measures and applicant-proposed conditions below, the proposed transfer and project modifications will have no significant impact on the environment. No further analysis or documentation is required.

Conditions Applicable to the Transfer

1. Pacific Terminals will be a Commission-regulated common carrier and public utility subject to the Commission's jurisdiction.

2. Pacific Terminals will operate under the same ratemaking authority as SCE/EPTC.

3. Pacific Terminals will take assignment of SCE/EPTC's existing contracts where possible and will accept assignment of SCE/EPTC's existing contracts "as is" with respect to the number of inventory cycles, degree of heating, and type of products subject to the contracts.

4. Pacific Terminals will not seek to operate the SCE/EPTC facilities outside of the bounds of the activities and applicable mitigations contemplated in the 1994 SCQAMD MND without seeking further authority and, if necessary, environmental review from this Commission and any other relevant agencies.

5. The SCE/EPTC facilities are subject to various permits issued by the SCAQMD and other agencies, and upon transfer Pacific Terminals will not operate the facilities outside of the bounds of those permits without seeking appropriate permit review and approval by the appropriate jurisdictional agencies, including further authority from the Commission, if required.

6. Pacific Terminals will agree to the imposition of the applicable mitigation measures in the 1994 MND on the six additional existing tanks (four at Los Alamitos and two at Long Beach) and include them in the management regime contemplated by the 1994 MND for the entire set of SCE/EPTC facilities.

7. Should Pacific Terminals contemplate additional changes to the operations or facilities of the SCE/EPTC package outside of the bounds contemplated in the 1994 SCAQMD MND and/or the existing permits for those facilities, Pacific Terminals will seek further authority and environmental review, if necessary, from this Commission and any other relevant agencies.